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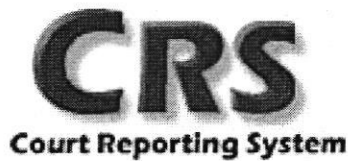
**First Judicial District of Pennsylvania**

*51CR00047682007*

*John In*

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*Trial (Jury) Volume 1  
September 12, 2008*



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*First Judicial District of Pennsylvania  
100 South Broad Street, Second Floor  
Philadelphia, PA 19110  
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[1] IN THE COURT OF COMMON PLEAS  
[2] FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
[3] CRIMINAL TRIAL DIVISION  
[4] ----  
[5] COMMONWEALTH :  
[6] :  
[7] vs. : C.P.# 51-CR-0004768-2007  
[8] :  
[9] JOHN IN :  
[10] ----  
[11] Room 801, Criminal Justice Center  
[12] Philadelphia, Pennsylvania  
[13] ----  
[14] Friday, September 12, 2008  
[15] ----  
[16] BEFORE: THE HONORABLE SANDY L.V. BYRD, J.  
[17] ----  
[18] JURY TRIAL  
[19] ----  
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[1] APPEARANCES:  
[2] LAUREN BARALDI, ESQUIRE  
Assistant District Attorney  
[3] For the Commonwealth  
[4] RICHARD GIULIANI, ESQUIRE  
Attorney for the Defendant  
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[1]  
[2] THE COURT: Mr. In, you have been  
[3] sworn. Tell me your full name, state your age,  
[4] and give me your date of birth.  
[5] THE DEFENDANT: John In, I-N,  
[6] 8/5/83.  
[7] THE COURT: How old are you?  
[8] THE DEFENDANT: Twenty-five.  
[9] THE COURT: What's the highest grade  
[10] you completed in school, sir?  
[11] THE DEFENDANT: Graduated high  
[12] school.  
[13] THE COURT: So you read, write,  
[14] understand English, correct?  
[15] THE DEFENDANT: Yes.  
[16] THE COURT: Where did you graduate  
[17] high school?  
[18] THE DEFENDANT: Olney High.  
[19] THE COURT: Have you been diagnosed  
[20] with and treated for mental illness or disease?  
[21] THE DEFENDANT: No.  
[22] THE COURT: Are you now under the  
[23] influence of drugs, alcohol, or medication?  
[24] THE DEFENDANT: No.  
[25] THE COURT: You heard your attorney,

[1]  
[2] Mr. Giuliani, tell me that you have decided not to  
[3] testify in this case; is that correct?  
[4] THE DEFENDANT: Yes, Your Honor.  
[5] THE COURT: You understand that you  
[6] are the defendant in this case and for that reason  
[7] you have a panoply of rights.  
[8] THE DEFENDANT: Right.  
[9] THE COURT: You've seen that play  
[10] out. You are presumed to be innocent, the  
[11] Commonwealth is obliged to prove guilt beyond a  
[12] reasonable doubt. Your attorney has confronted  
[13] the witnesses and you've observed that the  
[14] Constitutional rights that are yours have been  
[15] protected. Agreed?  
[16] THE DEFENDANT: Yes.  
[17] THE COURT: Now, we are at the  
[18] juncture where the Commonwealth has rested and  
[19] there's been a witness called for defense, and I  
[20] must advise you and ask as to what your options  
[21] are. I do this knowing full well that you have  
[22] had this discussion with Mr. Giuliani and he has  
[23] spoken to you in his role as counsel. I am simply  
[24] making a record.  
[25] Do you understand that?

[1]  
[2] **THE DEFENDANT:** Yes.  
[3] **THE COURT:** Every defendant in a  
[4] criminal trial has an absolute right to testify,  
[5] he or she's a right to call witnesses if the  
[6] defendant elects to do so.  
[7] Do you understand?  
[8] **THE DEFENDANT:** Yes.  
[9] **THE COURT:** On the other hand, every  
[10] defendant in a criminal case has a Constitutional  
[11] right against self-incrimination. You have a  
[12] right of silence at trial.  
[13] Do you understand?  
[14] **THE DEFENDANT:** Yes.  
[15] **THE COURT:** You have no obligation  
[16] to testify and/or call witnesses for that matter;  
[17] do you understand that?  
[18] **THE DEFENDANT:** Yes.  
[19] **THE COURT:** However, whether or not  
[20] you testify is a decision that you must make. It  
[21] is entirely up to you. It is not a decision that  
[22] Mr. Giuliani can make.  
[23] Do you understand that?  
[24] **THE DEFENDANT:** Yes.  
[25] **THE COURT:** Now, do you understand

[1]  
[2] what your rights are?  
[3] **THE DEFENDANT:** Yes.  
[4] **THE COURT:** Do you understand what  
[5] your options are?  
[6] **THE DEFENDANT:** Yes.  
[7] **THE COURT:** Do you understand you  
[8] can testify, if you want to?  
[9] **THE DEFENDANT:** Yes.  
[10] **THE COURT:** Do you understand if you  
[11] do not wish to testify, you can advise me that you  
[12] do not wish to testify and that decision would be  
[13] honored.  
[14] **THE DEFENDANT:** Yes.  
[15] **THE COURT:** Is that clear to you?  
[16] **THE DEFENDANT:** Yes.  
[17] **THE COURT:** Now, have you thought  
[18] about this?  
[19] **THE DEFENDANT:** Yes.  
[20] **THE COURT:** Having thought about  
[21] this, have you made a decision?  
[22] **THE DEFENDANT:** Yes.  
[23] **THE COURT:** What is your decision?  
[24] **THE DEFENDANT:** I do not wish to  
[25] testify.

[1]  
[2] **THE COURT:** Is that your decision of  
[3] your own free will?  
[4] **THE DEFENDANT:** Yes.  
[5] **THE COURT:** Is that your decision?  
[6] **THE DEFENDANT:** Yes.  
[7] **THE COURT:** Is it made of your own  
[8] free will?  
[9] **THE DEFENDANT:** Yes.  
[10] **THE COURT:** Did you discuss that  
[11] with your attorney?  
[12] **THE DEFENDANT:** Yes.  
[13] **THE COURT:** Are you satisfied with  
[14] his services?  
[15] **THE DEFENDANT:** Yes.  
[16] **THE COURT:** You understand not  
[17] withstanding all of that, it is not his decision,  
[18] it's your decision?  
[19] **THE DEFENDANT:** Yes.  
[20] **THE COURT:** Is the decision not to  
[21] testify yours?  
[22] **THE DEFENDANT:** Yes.  
[23] **THE COURT:** Are you doing this of  
[24] your own free will?  
[25] **THE DEFENDANT:** Yes.

[1]  
[2] **THE COURT:** Did anybody promise you  
[3] anything or force you to give up your right to  
[4] testify?  
[5] **THE DEFENDANT:** No.  
[6] **THE COURT:** You are doing this of  
[7] your own free will?  
[8] **THE DEFENDANT:** Yes.  
[9] **THE COURT:** Mr. Giuliani, there is  
[10] an instruction 3.10(a) that reads as follows:  
[11] It is entirely up to the defendant  
[12] whether or not to testify. He has an absolute  
[13] right founded on the Constitution to remain  
[14] silent. You may not draw any inference of guilt  
[15] or any inference adverse from the defendant from  
[16] the fact that he did not testify.  
[17] Does your client wish me to give  
[18] that instruction?  
[19] **MR. GIULIANI:** Yes, Your Honor.  
[20] **THE COURT:** Would you discuss with  
[21] him again, so that I can note that a discussion  
[22] took place?  
[23] (Discussion between defendant and his counsel.)  
[24] **MR. GIULIANI:** Thank you, Your  
[25] Honor.

[1]  
[2] **THE COURT:** Mr. In, did you hear me  
[3] read the instruction?  
[4] **THE DEFENDANT:** Yes.  
[5] **THE COURT:** Did you hear your  
[6] attorney say he wished to have me give that  
[7] instruction on your behalf?  
[8] **THE DEFENDANT:** Yes.  
[9] **THE COURT:** Once again there are  
[10] cases in the literature where defendants later on  
[11] appeal that say I did not want that instruction.  
[12] So it's been my practice to ask the defendant if  
[13] he wants me to give that instructions.  
[14] Do you understand that?  
[15] **THE DEFENDANT:** Yes.  
[16] **THE COURT:** Did you discuss this  
[17] with your attorney?  
[18] **THE DEFENDANT:** Yes.  
[19] **THE COURT:** And I don't want to know  
[20] what you discussed, I want to know what decision  
[21] you made?  
[22] **THE DEFENDANT:** Yes, I want the  
[23] instruction.  
[24] **THE COURT:** Did anyone promise you  
[25] anything, threaten you, or force you to make this

[1] decision?  
[2] **THE DEFENDANT:** No.  
[3] **THE COURT:** Is it your decision?  
[4] **THE DEFENDANT:** Yes.  
[5] **THE COURT:** Is made it of your own  
[6] free will?  
[7] **THE DEFENDANT:** Yes.  
[8] **THE COURT:** Nevertheless, this is  
[9] your decision?  
[10] **THE DEFENDANT:** Yes.  
[11] **THE COURT:** John In's decision?  
[12] **THE DEFENDANT:** Yes.  
[13] **THE COURT:** I'll give the  
[14] instruction, which brings to us the last part of  
[15] this which is the formal charging conference. So  
[16] the Court hereby convenes a formal charging  
[17] conference.  
[18] The Court makes the following  
[19] **finding:** The Court finding the defendant has  
[20] knowing, intelligently, and voluntarily exercised  
[21] his right of silence and determined that he will  
[22] not be testifying.  
[23] What points of charge, if any, are  
[24] you requesting, Mr. Giuliani?  
[25]

[1]  
[2] **MR. GIULIANI:** Your Honor, I don't  
[3] believe there are any other specific points for  
[4] charge that are necessary or unique to this  
[5] particular case, but for the no adverse inference  
[6] which we already discussed.  
[7] **THE COURT:** And the Commonwealth?  
[8] **MS. BARALDI:** I don't have any  
[9] additional points for charge.  
[10] **THE COURT:** Both of you on yesterday  
[11] off the record said that you would be satisfied  
[12] with the standard instructions. Mr. Giuliani said  
[13] in fact he wanted to be sure I charge false in  
[14] one, false in all. And I am going to tell you  
[15] that constitute standard instructions. I charge  
[16] the jury on what a stipulation is, I charge the  
[17] jury on expert witness. I'll give, at its  
[18] request, consciousness of guilty, flight, and the  
[19] defendant's failure to testify.  
[20] Are those among the standard  
[21] instructions?  
[22] **MS. BARALDI:** Yes, Your Honor.  
[23] **THE COURT:** Any objections?  
[24] **MR. GIULIANI:** No, Your Honor.  
[25] **THE COURT:** Is that the request?

[1] **MS. BARALDI:** Yes, Your Honor.  
[2] **THE COURT:** Let me give you the  
[3] verdict sheet to look at and tell me if you have  
[4] any objection, give one to each of the attorneys.  
[5] That is merely a proposed verdict  
[6] sheet I submit it to you for corrections or  
[7] objections. If you have concerns about it, mark  
[8] it up, and I will obviously make every effort to  
[9] have the verdict sheet reflect your request.  
[10] **MR. GIULIANI:** I believe it's  
[11] acceptable, Your Honor.  
[12] **THE COURT:** I told the two of you  
[13] earlier that I don't have a great facility for  
[14] names. Mr. Giuliani was successful on his motion  
[15] of acquittal on one of the three robberies, I want  
[16] to make sure we have the right name remaining.  
[17] **MR. GIULIANI:** You do, Your Honor.  
[18] **THE COURT:** Now, if you look at --  
[19] **MS. BARALDI:** I apologize, Mr. Yun's  
[20] name is spelled incorrectly. It should be Y-U-N,  
[21] its spelled V-U-N on the verdict sheet.  
[22] **THE COURT:** Counsel, what are you  
[23] alleging to be the objective of the conspiracy,  
[24] robbery and or burglary?  
[25]



[1]  
[2] **MS. BARALDI:** Yes, both robbery  
[3] and/or burglary.  
[4] **THE COURT:** And the overt act? That  
[5] doesn't go on the sheet but that's part.  
[6] **MS. BARALDI:** The unlawful--  
[7] **THE COURT:** Do you have the Bills  
[8] there? I think at some point, I mean, it can be  
[9] any number of, but to took another's property, is  
[10] that sufficient?  
[11] **MS. BARALDI:** Yes.  
[12] **THE COURT:** Mr. Giuliani and  
[13] Ms. Baraldi, do you agree that where there are  
[14] multiple alleged criminal objectives, the jury has  
[15] to determine which one, all or none, which is why  
[16] I have the interrogatory. Any objection to that?  
[17] **MR. GIULIANI:** No, Your Honor.  
[18] **MS. BARALDI:** No, Your Honor.  
[19] **THE COURT:** I am going to get the  
[20] sheet corrected and will you guys be ready to make  
[21] your closings?  
[22] **MS. BARALDI:** Yes, Your Honor.  
[23] **MR. GIULIANI:** Yes, Your Honor.  
[24] **THE COURT:** You may bring out the  
[25] jury.

[1]  
[2] **THE COURT CRIER:** Please remain  
[3] seated while the ladies and gentlemen enter the  
[4] courtroom.  
[5] (Jury enters the courtroom at 11:50 a.m.)  
[6] **THE COURT:** Thank you, ladies and  
[7] gentlemen. You may be seated.  
[8] Mr. Giuliani, you may continue, sir.  
[9] **MR. GIULIANI:** At this point in time  
[10] the defense would move for the admission of  
[11] Defense Exhibits 1 through 7, and defense would  
[12] rest.  
[13] **THE COURT:** Any objection?  
[14] **MS. BARALDI:** None, Your Honor.  
[15] **THE COURT:** The exhibits will be  
[16] received. The defense rests, is the evidence  
[17] closed counsel for both sides?  
[18] **MS. BARALDI:** Yes, Your Honor.  
[19] **MR. GIULIANI:** Yes, Your Honor.  
[20] **THE COURT:** Very well.  
[21] Ladies and gentlemen of the jury,  
[22] the first order of business is for you to put your  
[23] note pads and pens away. If you would placed them  
[24] under your seat on this occasion.  
[25] Members of the jury, now that you

[1]  
[2] heard all of the evidence which is to be presented  
[3] in this case, the next step is for the attorneys  
[4] make their closing arguments. Now, even though  
[5] these arguments do not constitute evidence, you  
[6] should consider them carefully. In their  
[7] arguments the attorneys for both sides will call  
[8] to your attention to the evidence which they  
[9] consider material and they will ask you to draw  
[10] certain inferences from that evidence.  
[11] You must keep in mind, however, that  
[12] you are not bound by the attorney's recollection  
[13] of the evidence. It is your recollection of the  
[14] evidence and yours alone which must guide you in  
[15] your deliberations. So if there is a discrepancy  
[16] between the attorney's recollection of the  
[17] evidence and your own, you are obviously bound by  
[18] your recollection of the evidence. Nor are you  
[19] limited in your consideration of the evidence to  
[20] that which is mentioned by the attorneys. You  
[21] must as jurors consider all of the evidence which  
[22] you deem material to the issues involved in this  
[23] case.  
[24] Now to the extent that the  
[25] inferences which the attorneys ask you to draw are

[1]  
[2] supported by the evidence and appeal to your  
[3] reason and judgment you may obviously consider  
[4] them in your deliberations. Jurors, the attorneys  
[5] may call to your attention certain principles of  
[6] law in the course of their arguments. Please  
[7] remember, you are not bound by any principle of  
[8] law mentioned by any attorney. You must on you  
[9] oath both accept and apply only the law in which I  
[10] instruct you and you must apply that law to the  
[11] facts as you determine the facts to be in reaching  
[12] your verdict.  
[13] Now, ladies and gentlemen, under the  
[14] rules promulgated by the Supreme Court of  
[15] Pennsylvania, Mr. Giuliani, the attorney for the  
[16] defendant Mr. In will address you first followed  
[17] thereafter by Ms. Baraldi the attorney for  
[18] Commonwealth. After which I shall instruct you in  
[19] the law which you must accept and apply to the  
[20] facts as you determine the facts to be in reaching  
[21] your verdict.  
[22] Mr. Giuliani, are you ready to  
[23] address the jury, sir?  
[24] **MR. GIULIANI:** I am, Your Honor.  
[25] **THE COURT:** You may.

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**MR. GIULIANI:** Thank you.

May I please the Court, Counsel,  
members of the jury. Good morning.

Before I begin my closing I think it  
appropriate to give you a word of thanks, really,  
thank you for being here. It may sound strange  
from me since I'm partially responsible or  
partially to blame for you being here, but I say  
thank you anyway.

This trial is many things. It's an  
attempt to do justice, a search for truth, and  
elaborate presentation for you. You are our  
ultimate audiences. Everything we do here is for  
you and I would say there is very, very little  
that Ms. Baraldi and I agree upon, but I don't  
think we are out of line by saying we have paid  
attention to you and listened to the evidence, and  
for that I thank you and my client thanks you.

But, now, ladies and gentlemen, the  
most difficult of your service is about to begin.  
You are going sit in judgment on a fellow  
citizen. What do we know about this case? Well,  
the defendant is charged with robbery, two counts,  
burglary, criminal conspiracy, possession of an

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instrument of crime, and firearms offense. And  
the Judge is going to give you the formal  
definitions. Robbery, taking property from  
another person by threat of force. Burglary,  
entering a property. Conspiracy, agreeing someone  
to commit a burglary or robbery. Having the gun,  
that would be a firearms offense.

And let me break it down clearly to  
you. If you believe beyond a reasonable doubt  
that John In is the third guy in that house in the  
basement, then you must convict him of everything,  
you must. There's no other way to it, you have to  
convict him.

You know that there's three males in  
that house. You know two of them. We know Dyshon  
Marable is upstairs. You know Jerry Jean starts  
upstairs and dives out downstairs, we know that.  
So who is guy No. 3. Let's talk about that. Guy  
No. 3. The Commonwealth tells you it's John In.

Let's look at the people inside of  
the house. Christina Khem is upstairs, she  
doesn't identify anybody upstairs; Mr. Yun cannot  
identify anyone. Dina, can. Now, she identifies  
the person who has the gun to her father as John

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In. So let's talk about her identification but  
all of the other physical and circumstantial  
evidence about that identification.

Ms. Khem came in here and I think  
she was 15 or 16 years old when this happened, and  
by the way, let me say this again, I am going to  
touch on a lot of facts as I heard it. But it's  
not what I believe, not what I find. You are the  
factfinders, you and you alone. So if I say  
something inconsistent with your recollection,  
yours controls, not mine. If that happens, please  
understand I would not intentionally mislead you.

Anyway, Dina Khem says I wake up and  
hear this noise. And it's clear when she's in her  
bed she makes that phone call which you heard that  
call. It's clear in that bedroom downstairs she  
has no vision, no sight, she can't see who's on  
the steps. She says she makes the call. And we  
know at that point in time it's clear that three  
officers respond, Battles, Robinson, and Nolan.

And she testifies that after she  
hears an officer come in and say "police, police"  
who we know as Officer Battles, only then does she  
go to the base of the steps and she sees her

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father with the gun pointed to him, and the  
individual has one hand on the door.

Now, she says I got to see that  
individual for two or three minutes. I stared at  
him from 40 feet away and the lights were on and  
it's John. That was her testimony.

However, if you recall again, I got  
her to admit that she had the gun pointed at her  
by that individual who told her, "shut the fuck  
up," that at the very end she said I was there for  
two or three seconds and turns around  
immediately. And I also showed you through her  
testimony that she had testified before in this  
case and she said before I saw him for two or  
three seconds. Two or three seconds to identify  
somebody you don't know, you never seen before.

Now, compare and contrast that with  
Mr. Yun. Mr. Yun doesn't know these individuals  
who go in the house. He says I turn around and  
there's three males behind him. He can't identify  
who they are. But then we have this issue which I  
hope didn't annoy you by doing this over and over  
again. The tallest one is the one with the gun  
and the tallest one took me in the basement. He

[1]  
[2] said it before under oath at the preliminary  
[3] hearing, he said it again here, and statement in  
[4] evidence, the tallest one.

[5] Now, ladies and gentlemen, you can  
[6] see somebody even under hectic circumstances,  
[7] dangerous circumstances, and not recognize their  
[8] face or get a glimpse. But if you see three  
[9] people and maybe you don't, you can't tell their  
[10] age, race, or what they are wearing, but if you  
[11] see three people right there behind you and you  
[12] look at them, I submit to you it's easy to compare  
[13] and contrast them and say one is bigger than the  
[14] other.

[15] I'll bet you that on the first day  
[16] of jury selection when you saw Mr. In, myself, and  
[17] Ms. Baraldi, that maybe you don't remember three  
[18] days ago what I was wearing, maybe you don't know  
[19] each of our heights, but if I were to ask you  
[20] which one of us, these three people here, is the  
[21] tallest, you would be able to tell me that,  
[22] wouldn't you? Because you are able to see and  
[23] compare one against the other.

[24] Mr. Yun's testimony is contradictory  
[25] to his daughter's because we know from the

[1]  
[2] evidence in the 75-449 John In is five-nine.  
[3] That's the evidence we have that's before you,  
[4] that's in evidence. You saw Dyshon Marable, you  
[5] saw how big he was, and we had that instance where  
[6] I had asked the Judge to stand him up and stand  
[7] him next to me. And Jerry Jean depending on which  
[8] officer you ask was anywhere between 6-4 and 6  
[9] foot, somewhere in there. I think Officer Nolan  
[10] had him 6-4, 225 or husky or something like that.  
[11] Clearly, Jerry Jean is the tallest.

[12] So let's use logic and reason. And  
[13] if you didn't know it before today when you heard  
[14] this chaos outside, mass confusion and chaos  
[15] outside and understandably so. A house filled  
[16] with kids, you heard all of those calls on there,  
[17] you heard the frantic, running back and forth.  
[18] You heard it, it's confusion. And when things  
[19] like that happen in a confused state, mistakes are  
[20] made, even by trained police officers.

[21] You heard Officer Battles today, we  
[22] put her up. She was the first one in there. She  
[23] gives a statement later on that in her IAD  
[24] statement that the guy was wearing an orange hoody  
[25] and came out of the kitchen area. Well, I am not

[1]  
[2] putting that evidence on to say that Officer  
[3] Battles saw Jerry Jean came out of the basement.  
[4] That's not the purpose of that evidence. The  
[5] purpose is to show that even people, trained  
[6] police officers, in the heat of the moment when  
[7] these excited events happen, they make mistakes  
[8] too. They are human just like us. They are  
[9] human, that's okay. And that's all right because  
[10] that happens on the street and we don't convict or  
[11] find guilt on the street.

[12] The stakes in here are most  
[13] definitely not okay. This is where we sort it out  
[14] and this is where we hear the evidence and  
[15] presented and this is where through  
[16] cross-examination we get to tell who is telling  
[17] the truth and who is accurate. That's why we have  
[18] trials and need trials in this case.

[19] Marable and Jean are the two guys  
[20] upstairs. The third guy in the basement is not  
[21] John In. That guy is not here, he's not caught.  
[22] You hear out in the alley after the discharge of  
[23] Officer Battles' weapon that gloves are found.  
[24] You hear that there is DNA taken from John In and  
[25] from Jerry Jean. You hear conclusively that

[1]  
[2] chances that this would randomly be connected to  
[3] Jerry Jean in one in something-quadrillion, the  
[4] glove has all of the DNA which fits all of the  
[5] evidence. Christina Khem says the big guy went  
[6] out of the back door and Officer Nolan tried to  
[7] get him as he was jumping out of the window and he  
[8] threw a glove and got rid of it, it's his.

[9] What about the glove found in the  
[10] front vestibule of the house that is not Jerry  
[11] Jeans' glove. It has DNA on it, it has DNA from a  
[12] male, a male's DNA, it's not Jerry Jean because  
[13] they have his sample. They matched it and it  
[14] doesn't fit. It's not John In, so I am going to  
[15] ask you whose is it? We know it can't be  
[16] Marable. Marable goes upstairs, does anybody say  
[17] Marable has latex gloves on? Did you hear that?  
[18] When this rocket scientist figured he'll hide in  
[19] the bottom of the closet for three days until the  
[20] family goes to work and he'll slip out of the  
[21] house. He's not wearing gloves. And once he goes  
[22] upstairs the evidence is he never comes back down  
[23] until he is arrested. Jerry Jean doesn't go out  
[24] of the front door.

[25] The only logical conclusion is that

Page 25

[1]  
[2] the guy in the basement when Battles and Robinson  
[3] went out of the back door to chase after Jerry  
[4] Jean and Nolan is upstairs, the guy in the  
[5] basement runs out of the front door. That's  
[6] exactly what happened. That's reason and logic.  
[7] That's the only way to look at this case and say  
[8] this is what happened. And it's that guy, ladies  
[9] and gentlemen, who dropped that glove. That's a  
[10] logical inference that you should make, an unknown  
[11] male. Because if it's this guy, his DNA would be  
[12] on it.

[13] John In is not the guy in the  
[14] basement, it's another unknown male. That's not  
[15] me telling you, that's science. That's science,  
[16] that's DNA. He's excluded, it can't be him, it  
[17] can't be him.

[18] And by the way, since Baraldi  
[19] brought it up on Battles' cross-examination about  
[20] the navy blue zip-up sweats that she grabbed John  
[21] In's shirt that he was wearing. This is Dyshon  
[22] Marable's zip-up, it seems like there's a zipper  
[23] on this one too. And you can quibble over navy  
[24] blue, the fact is it's blue and it has a zipper  
[25] and when Officer Battles puts that flash out,

Page 27

[1]  
[2] Officer Birch, RPC33.  
[3] Let's talk about Officer Birch's  
[4] testimony. He said John In was kneeling next to  
[5] the passenger's side, that he then jumped in  
[6] through the door into the driver's seat and took  
[7] off, that's what Birch told us. Now, you also  
[8] know Defense Exhibit 2 which is in evidence, this  
[9] was a memo he made that night and signed. And in  
[10] this memo he says he arrived on location and  
[11] observed the male sitting inside the Nissan  
[12] Altima. That's a little bit different. He  
[13] doesn't say he's outside kneeling outside of it.  
[14] And then, of course, there's Defense Exhibit 3 the  
[15] statement he gave later on, 3/20/07.

[16] "On 3/7/07 at 5:15 I was working in  
[17] uniform as RPC-33. There was a radio call at 720  
[18] Mifflin for assist officer, I responded. I saw an  
[19] Asian guy running northbound on 6th Street. There  
[20] was a white Nissan Altima parked on the southeast  
[21] corner on 6th and Mifflin, that's a whole block  
[22] away. And when I asked Officer Birch about this,  
[23] he said it's the 600 block of Mifflin, same  
[24] thing. No, it's not. If the vehicle is  
[25] supposedly here on the corner of 7th and Mifflin

Page 26

[1]  
[2] Mr. Marable is upstairs. They don't know where he  
[3] is. The science sets this man free, it's not  
[4] him. Clearly, it's not him, there's somebody  
[5] else.

[6] So then if he's not the guy inside,  
[7] what role, if any, does he have? Well, let's talk  
[8] about that. John is supposedly driving the white  
[9] Altima and in the Altima are traffic tickets for  
[10] Jerry Jean, which he received a couple weeks  
[11] before. Latex gloves and a gun. Let's talk about  
[12] that, because I am going to tell you right now,  
[13] there is no foregoing conclusion that John In is  
[14] going to prove it to you. Remember, I don't have  
[15] a burden, but I'm going to show you.

[16] Now, who is the one officer who  
[17] tells you that John In gets into that car, there's  
[18] only one officer that says it. Remember, Nolan,  
[19] Robinson, and Battles are in the house. And  
[20] Battles stays in the house after everything  
[21] happens. Nolan and Robinson run out of the  
[22] front. I said did you see anybody running away or  
[23] in a car and they said no. Who is the officer  
[24] that comes on the scene and says I see him  
[25] kneeling next to the passenger's side. Remember?

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[1]  
[2] he says he sees him in the southeast corner of 6th  
[3] Street, he sees a male running northbound on 6th,  
[4] that's what he says and gets into a car here. Why  
[5] the difference three weeks later giving a  
[6] statement? Why such a change in testimony?  
[7] That's not a small inconsistency, that's a big  
[8] deal, a whole block away.

[9] And let me continue because you  
[10] heard a lot of evidence, you heard a lot of  
[11] evidence. But how about this radio tape this  
[12] morning, a lot of it was boring, but we had this  
[13] chart up here about who the officers were who were  
[14] talking. And, again, just so you are clear, the  
[15] Commonwealth's evidence was that Birch comes, and  
[16] I'm going to hold up C-12, the map. That Birch  
[17] comes down the wrong way down 7th followed by  
[18] Seabron, and stops here just through the  
[19] intersection and jumps into the car, and go down  
[20] the street and takes off after him in this  
[21] vehicle. He goes all the way through here, puts  
[22] his car on 5th and Mifflin, my client jumps out of  
[23] the car, and chases after to him. Do you remember  
[24] that testimony? Your recollection controls.

[25] The problem with that, there's



Page 29

[1]  
[2] multiple problems with that. There's an officer,  
[3] I would argue and you heard it, it's the guy that  
[4] went into the white Altima, he went westbound on  
[5] Mifflin Street. You know it's actually  
[6] eastbound. All right, I can understand that  
[7] mistake, west versus east. No big deal. He just  
[8] cut down 5th Street, I got another car behind me.

[9] Let's think about that. Fifth  
[10] Street is all the way down here to the edge of the  
[11] picture. If you are a police officer in a police  
[12] cruiser and turn down Mifflin and following the  
[13] white Altima which we know comes to rest at 524,  
[14] it doesn't go any further. Why would you tell  
[15] police radio, when it's happening that he cut down  
[16] 5th, all the way down here. Why would he say  
[17] that? Why? I'm going to tell you why or suggest  
[18] to you a reason why in a minute.

[19] Page five of the transcript of the  
[20] call that you just heard, "Radio 33, let me know,  
[21] and this is 33, this is Officer Birch, "Let me  
[22] know if anybody retrieved my vehicle, it was  
[23] sitting on the 700 block of Mifflin Street. I  
[24] jumped out after this male."

[25] Well, that's interesting because he

Page 31

[1]  
[2] Of course, Birch is the only officer  
[3] that says this man gets out of that car, he's the  
[4] only one. Now Sergeant Woods ends up capturing  
[5] the defendant. He sees him running, but where's  
[6] he coming from? Where's he coming from? The only  
[7] person who puts him inside of the car is Birch.  
[8] And Birch also tells you, ladies and gentlemen,  
[9] and I hope you caught his testimony, he told you I  
[10] saw Sergeant Woods apprehend him at 5th and  
[11] Hoffman. He saw it. Let's go back to this  
[12] transcript.

[13] "RPC-4 Charlie," which we know from  
[14] our chart is Sergeant Woods, "get me a wagon, get  
[15] me a wagon at 5th and Hoffman."

[16] Then Radio 400, we know that's  
[17] Officer Jenkins. We saw her testify and they were  
[18] in a wagon. 5th and Hoffman.

[19] Then you hear, 33, here's Birch  
[20] again, "33, that's where you want me at, 5th and  
[21] Hoffman?"

[22] Why is Birch asking the radio  
[23] whether he should go to 5th and Hoffman if he's  
[24] already there and he witnessed Sergeant Woods  
[25] apprehend this man. It's because he ain't there.

Page 30

[1]  
[2] told you in his testimony coming down 7th, drove  
[3] all the way and followed and stopped on 5th Street  
[4] and saw the male get out who he identifies as John  
[5] In as the guy getting out of the car. On the  
[6] police radio, he's asking someone else to pick up  
[7] this car which he left running on the 700 block of  
[8] Mifflin. Why is that? Because he got out of his  
[9] car at 7th and Mifflin.

[10] The reason why he thinks the car  
[11] turns down 5th Street is because he's up here, he  
[12] got out on foot, 7th Street, somewhere down here.  
[13] And when the car does turn right towards this  
[14] house, he's more than a block away, and he says  
[15] the car made a right turn, he must have turned  
[16] down 5th street. That's what happened. He was  
[17] not right behind that car.

[18] And I'll give you even more evidence  
[19] to show you that Birch was not behind that car,  
[20] how about Officer Seabron, who testified  
[21] yesterday. Remember what he said, Oh, yeah, I  
[22] went up to the car, the Altima on 5th and Mifflin,  
[23] 524, and I asked him and Ms. Baraldi did too,  
[24] where was Birch's car? Remember what he said? I  
[25] didn't see it, it wasn't there. It wasn't there.

Page 32

[1]  
[2] He was not on the scene when John got arrested.  
[3] And he didn't see him get out of that car.

[4] How did the car get there, Giuliani?  
[5] Did it drive itself? Obviously not. Obviously  
[6] not. Who drove it? I don't know, it's not my  
[7] burden to prove it. I do know that in that car  
[8] there's a gun, a gun. And if the Commonwealth's  
[9] case is accurate and what the Commonwealth wants  
[10] you to believe is John In was the guy in the  
[11] basement, took off out of the house, ran out to  
[12] the Altima, got in the Altima with the gun, and  
[13] drove down the street, took off when the police  
[14] came, ran out of the car and got caught and that's  
[15] his gun.

[16] What's the problem with that, ladies  
[17] and gentlemen? What's the big problem with that?  
[18] No DNA on the gun. Well, there is DNA on the gun,  
[19] excuse me. It's not his. How do you explain  
[20] that? How do you explain the fact that Dina Khem  
[21] and Mr. Yun both say the guy pointed a gun at me.  
[22] You got to figure, whoever it is, is pointing it  
[23] at the guys head, at this poor man's head taking  
[24] him down in the basement, points it at Mr. Yun.  
[25] And when Dina Khem comes out of her bedroom,

[1]  
[2] points it at her, and says "shut the fuck up."  
[3] Did anybody say that person, John In, was wearing  
[4] gloves, no. No evidence of that. So how did DNA  
[5] from an unknown male happen to get on that gun and  
[6] it's not his? If he really took it in that car,  
[7] got in that car, ditched it in the car and ran out  
[8] of the car, explain that to you. You know why,  
[9] because science doesn't lie. People can be  
[10] mistaken; people can be mistake, the cops can be  
[11] mistaken, it happens. If it happens on the street  
[12] in this situation, these facts, this danger,  
[13] that's okay. If it happens on the street; it's  
[14] not okay if it happens here?

[15] Science doesn't lie to you. Why is  
[16] his DNA not on that gun if that's his gun. That's  
[17] the Commonwealth's case, ladies and gentlemen. I  
[18] didn't hire the DNA guy, the police did. And  
[19] thank God that they did, that's unusual evidence  
[20] to have and a reflection of the seriousness of  
[21] this case, and it's appropriate to have it. If I  
[22] had a dollars for every time I heard a DA open a  
[23] case and say forget what you heard about CSI, we  
[24] don't have that in most of these cases, but we got  
[25] it here. That's a tool for you, you need that to

[1]  
[2] all of the other evidence, all of it.  
[3] Ladies and gentlemen, there's not  
[4] much good that comes out of this case. There is  
[5] one good thing and that's that nobody got hurt, no  
[6] cops, no victims, no defendants, thank God.  
[7] That's the only positive thing that came out of  
[8] this case, that's it. And they got two of the  
[9] guys, they got him. They got Marable, they got  
[10] Jean, without question. But when you go back here  
[11] to deliberation, remember, there has been a lot of  
[12] evidence that you heard. Remember, this is a  
[13] fellow citizen of yours, his life is in your  
[14] hands, it's all about him.

[15] The Judge is going to tell you and  
[16] explain the definition of reasonable doubt is the  
[17] kind of doubt that would make a person hesitate  
[18] and pause in a matter of greatest important in his  
[19] or her life. I am not asking you to lay down for  
[20] him or turn a blind eye. That's to the contrary,  
[21] I want you to look at it in a critical eye. Look  
[22] at it, study it, make it yours, this is what we  
[23] need. We need good hard working people to go in  
[24] there and talk about. It's not just to take  
[25] everything for granted and say, well, that's what

[1]  
[2] do your job. You need that to look at this  
[3] critically and say how do you explain this?  
[4] That's the Commonwealth's case. There is only one  
[5] person, one officer, who says he's driving the car  
[6] and that's Birch. And I showed you from his  
[7] testimony what that means. It doesn't add up,  
[8] it's not just one piece. Ms. Baraldi talked about  
[9] Legos, she is right, she's correct. But they  
[10] don't add up. The evidence doesn't add up. The  
[11] Commonwealth's case doesn't fit, it doesn't make  
[12] sense.

[13] The Judge is going to give you a lot  
[14] of different instructions and no doubt the  
[15] Commonwealth will mention and rely on the fact  
[16] that there's an instruction, flight from police  
[17] equals consciousness of guilty. What that means  
[18] is that the guilty man who is faced with the  
[19] police is going to run. And the Judge is going to  
[20] tell you that you may listen to the instruction,  
[21] that you may infer consciousness of guilty from  
[22] someone running from police, not must. You don't  
[23] have to. The Judge is also going to tell you in  
[24] that instruction that flight from the police alone  
[25] is not enough to convict you. You have to have

[1]  
[2] the cops tell me and the police tell me,  
[3] whatever. And it's not an issue if again --  
[4] because I am going to ask you and you should find  
[5] this defendant not guilty of all charges. And I  
[6] am going to tell you if you do do that, let me  
[7] tell you what it is and what's the not.

[8] First of all, it is not an  
[9] indictment of the police department in any  
[10] fashion. You are not saying they did a terrible  
[11] job or a bad job, absolutely not, to the contrary.  
[12] If anything these officers are brave,  
[13] particularly, Battles, Robinson, and Nolan who go  
[14] charging in there, to a house with multiple people  
[15] with guns. That's extremely brave what they do,  
[16] there's no doubt about it. The Judge is also  
[17] going to tell you you can't decide for or against  
[18] the defendant based on prejudice or sympathy.  
[19] Look where we are today, in the courtroom. It's  
[20] not a house of worship or a public awards service,  
[21] there's other days and other times, this is a  
[22] courtroom. We are here to seek the truth.  
[23] Sometimes exposing the true facts can be a little  
[24] trouble. The truth hurts and stings a little  
[25] bit. Sometimes exposing the true facts can be



[1] troubling. Because at first glance when you look  
[2] at the case the young lady identifies my client as  
[3] being the gunman inside of the house tying up her  
[4] dad, running out of the house, getting in the car  
[5] away from the scene and ditching the car with a  
[6] gun in it, that's bad.

[7] But you know more than that now, you  
[8] know a lot more. You know there's a lot more than  
[9] just that DNA. His DNA is on nothing here,  
[10] nothing. Some other male's is.

[11] Ladies and gentlemen, it comes to a  
[12] point in time in each of our lives when we are  
[13] forced to make a decision which could be  
[14] unpopular, might be difficult, but an important  
[15] decision that affects others. This is one of  
[16] those times, ladies and gentlemen. This, here,  
[17] today, now. Step up in time. So I'm asking you,  
[18] do you have the guts if you go back there and look  
[19] at this evidence and say to each other, I am not  
[20] satisfied. Do you have the guts to come in here  
[21] individually and say not guilty? You have that  
[22] strength, that's what I am asking you and he's  
[23] asking you for that.

[24] And when you go back there you may  
[25]

[1] look at certain evidence, Dina Khem seemed to know  
[2] what she was saying, but on the other hand there's  
[3] DNA issue, but then the car goes down the street  
[4] and he's seen running around from it; well, on the  
[5] over hand there's a gun in there and it's got some  
[6] other guy's DNA on it. You know what that is,  
[7] that waffling back and forth, that's reasonable  
[8] doubt. That's what that is, that is reasonable  
[9] doubt. Not beyond all reasonable doubt the Judge  
[10] is going tell you, not beyond a mathematical  
[11] certainty, but that's reasonable doubt. That's  
[12] what that is. And if you find reasonable doubt  
[13] you got to say not guilty. There's supposed to be  
[14] some evidence in every case, if there was no  
[15] evidence, there would be no case. But the  
[16] standard is guilty beyond a reasonable doubt. And  
[17] if you are not satisfied or if you are not sure,  
[18] or if you are unsure about it, you got to say not  
[19] guilty.

[20] That's what you have to do, you took  
[21] a sworn oath today, so that's what I am asking you  
[22] to do. You are going to get this verdict sheet  
[23] and it's going to have each of these counts on  
[24] here. Burglary, two counts of robbery, possession  
[25]

[1] of an instrument of crime, two firearms offense,  
[2] and criminal conspiracy. Your verdict, ladies and  
[3] gentlemen, is on the right of each charge. The  
[4] only two possible verdicts are guilty or not  
[5] guilty. I am arguing to you, ladies and  
[6] gentlemen, this verdict should be not guilty --  
[7] excuse me, not guilty.

[8] Not guilty. Let me say it again,  
[9] not guilty. Not guilty. Let me say it again, not  
[10] guilty. Use this service, use your service today,  
[11] ladies and gentlemen, as an opportunity to do  
[12] something to do justice and how often do you get a  
[13] chance to really do justice, really you can do  
[14] that here. So I ask you to use this opportunity,  
[15] seize it and make it yours, and come out here as a  
[16] group after full deliberations and say out loud  
[17] publicly, the evidence is not enough and if you do  
[18] on each and every count on that verdict, not  
[19] guilty. Thank you for your time.

[20] **THE COURT:** Thank you,  
[21] Mr. Giuliani.

[22] Ms. Baraldi, you may address the  
[23] jury.

[24] **MS. BARALDI:** Thank you, Your Honor.  
[25]

[1] Good afternoon, everyone, Counsel,  
[2] and Your Honor.

[3] For John In to be not guilty, Dina  
[4] Khem would have to had gotten up here, sworn under  
[5] oath, in front of God and all of you and lied.  
[6] For John In to be not guilty Officer Birch would  
[7] have stood in front of all of you, took an oath to  
[8] God and lied. Now, if you believe that, that's  
[9] the only way that John In is not guilty.

[10] Dina Khem doesn't see John In first  
[11] today 18 months later. Every opportunity Dina  
[12] Khem has been given to identify the man who  
[13] pointed a gun to her and had her dad tied up with  
[14] this orange cord, she has told you it is John In.  
[15] She told you the police officers that night at the  
[16] paddy wagon within how many minutes, seven, it was  
[17] John In. She goes to a preliminary hearing five  
[18] weeks in front of a Judge, not this one, and tells  
[19] the Court then, it's John In. She come in here  
[20] and unequivocally tells all of you it's John In.

[21] How do you know? His nose. It's in  
[22] her head. It's in her head. If somebody is  
[23] pointing a gun at you you are going to have the  
[24] memory burned in your head. This girl is scared  
[25]

[1] to death. Somebody has got her dad. She's got  
[2] the presence of mind to call 9-1-1, she comes out  
[3] only after there is safety there. She says, Pa,  
[4] which in Cambodia means dad. He tells her in a  
[5] muffled voice to be quiet. Well, that's the point  
[6] John In realizes that she's there. He turns and  
[7] points the gun at her and says shut the fuck up.  
[8] While this is going on, her little sister Angela,  
[9] has opened the basement door and he's pulled it  
[10] back shut. Now me telling you those events took  
[11] longer than two to three seconds, didn't it.

[13] She looked him in the face. Not  
[14] only did she have to look him in the face that  
[15] night, she looked him in the face in the basement,  
[16] out in the street in the paddy wagon, in the  
[17] courtroom twice in front of all of you, and told  
[18] you it was John In. She didn't hesitate, she  
[19] didn't waiver, it was John In.

[20] Officer Birch, you've heard the  
[21] radio, he is contemporaneously given a description  
[22] of his location. For he to have been lying as he  
[23] sits here today, he would have to had at the time  
[24] realized 18 months later we would be here and, oh,  
[25] well, I am going to say he fled from a car because

[1] the car crashed here. I'm going to say it's this  
[2] guy when he's over the radio tape  
[3] contemporaneously giving description of where the  
[4] guy is, as Sergeant Woods come around the corner.  
[5] And let's be serious no one else is out there at 5  
[6] o'clock in the morning than Jerry Jean and John In  
[7] because if they would they would have been  
[8] stopped, we have the radio tapes.

[10] Counsel can't explain that away. He  
[11] lives around the corner from Jerry Jean, seven  
[12] miles from the location. He's there because he's  
[13] the guy in the basement, common sense. Common  
[14] sense. Counsel makes a big argument about DNA.  
[15] In the Judge's instruction you will not hear the  
[16] word "DNA." Do you want to you know why? You  
[17] don't need them for a conviction. How many people  
[18] touch that gun? You know the officer. You know  
[19] the Officer moved the gun. He told you when he  
[20] got in the car because the car was still in drive  
[21] because he ran into a building before he flees.

[22] And, come on, you really think three  
[23] guys go to rob a house and the only one smart  
[24] enough to wear the latex glove in the back seat is  
[25] Jerry Jean. Come on, they all had them on. And

[1] the Judge asked the DNA guy, would the DNA be on  
[2] the gloves? No, that's the point of wearing the  
[3] latex gloves.

[5] I talked about the Legos, Counsel,  
[6] brought it up in his closing too. And there's a  
[7] reason for it too because when it comes to Officer  
[8] Birch, we have Officer Cannon behind him. And  
[9] then you have Officer Birch and Officer Cannon  
[10] from the north from the 3rd, and they are telling  
[11] you where they were coming from and tell you 2nd  
[12] Street they are coming down.

[13] These are the pieces to our puzzle.  
[14] Okay? First of all, we have Dina Khem, three  
[15] times after the incident identifying our  
[16] defendant. In court identification and  
[17] identification on the street. We also have, if  
[18] you recall, Christina Khem saying after the police  
[19] runs out in the back she's left alone in that  
[20] living room for a second. Procedurally wise,  
[21] should an officer have gone upstairs, in the back,  
[22] and in the basement, yes. But as you hear this is  
[23] happening in realtime.

[24] There is a period of time when  
[25] Christina and Angela are left on the first floor

[1] and sees someone running in a dark sweatshirt.  
[2] And we learn from the radio tapes that Angela Khem  
[3] also gives the dark sweatshirt. Because we know  
[4] she's the little girl on the couch. And which  
[5] have the white Altima, who counsel somehow wants  
[6] you to believe that Officer Birch didn't see all  
[7] that happen although we have him giving  
[8] description of everything that's going on, and  
[9] you'll have the radio tapes and transcripts to  
[10] review later on. We know John In is in the  
[11] Altima, there's not a question about that. Okay?

[13] And the reason Officer Birch has to  
[14] be lying because counsel can't get around the fact  
[15] that inside of the Altima happens to be tickets to  
[16] the co-defendant Jerry Jean, in addition to  
[17] Jacqueline Jeans Shoprite card from a month before  
[18] and parking tickets to that Altima. There are  
[19] three of them.

[20] Also, so we have in the white  
[21] Altima, we have the tickets to Jerry Jean. Now,  
[22] also in the Altima Detective Conn is the one that  
[23] testified to this, there was a title not in  
[24] anybody's name and an additional license. But  
[25] what's significant to all of this is all of these

[1]  
[2] addressees comes from 35th, which happens to be by  
[3] their own admission where they live. The  
[4] defendants told police officers in their 229 where  
[5] they live. And crazy that Jerry Jean is here and  
[6] John In is about a mile away. Yet at 5 o'clock in  
[7] the morning they are five miles away, but counsel  
[8] wants us to believe they are not involved. And  
[9] all of the addresses on the car, all of the 35th  
[10] addresses to Loudon Street and the address to the  
[11] license. Also, in the white Altima are the latex  
[12] gloves. Also in the Altima is the gun he held to  
[13] Mr. Yun's head and the gun he pointed to Dina  
[14] Khem. And look, let's be serious, he runs from  
[15] the police. He runs from the police. I mean, he  
[16] ran from the police, there's a chase. They catch  
[17] him two blocks away through the alleyway. They  
[18] catch him at 5th and Hoffman. The car crashes on  
[19] 5th and Mifflin.

[20] John In is the person in the  
[21] basement. How did they get in the house? We  
[22] don't know. Vuthay Yun standing at the sink. He  
[23] told us in part English and Cambodian that he  
[24] could only turned his head slightly. But he could  
[25] tell, the person that took him in the basement was

[1]  
[2] taller than the person standing next to him.  
[3] Okay? Well, what if the person standing next to  
[4] John In was Dyshon Marable because we all saw how  
[5] short Dyshon Marable was. And if you are standing  
[6] this way and turn your head slightly, can you see  
[7] who that person is right here? No.

[8] It was John In, Dyshon Marable, and  
[9] Jerry Jean who was standing behind Mr. Yun. And  
[10] John In takes Mr. Yun in the basement.

[11] And you saw Dyshon Marable, he  
[12] wouldn't even say his name, let alone be sworn in.  
[13] Well, why? He took a plea, he's serving his  
[14] time. He's not going to snitch on his buddy, no  
[15] matter what the consequences are to him. You saw,  
[16] you saw the attitude he gave everybody including  
[17] the Judge. Well, that's his boy, I brought him  
[18] down here. He's not going to testify for the  
[19] Commonwealth, right?

[20] So when John In takes Mr. Yun to the  
[21] basement and he hears the police commotion, Dina  
[22] comes out of the room, which explains why John In  
[23] would be at the basement door because he hears  
[24] "police, police," and brings Mr. Yun up with him.  
[25] Which make sense because Angela is on the couch

[1]  
[2] and tries to open the door and pulls the door back  
[3] shut. So he's standing there and Battles and  
[4] Robinson goes into the backyard and he's thinking  
[5] great, all clear, and he runs out of the front.  
[6] Which explains why Christina Khem and Angela Khem  
[7] see a dark sweatshirt running out of the front  
[8] door.

[9] Counsel was also talking about DNA  
[10] in the latex glove. Dyshon Marable's DNA was not  
[11] taken. You heard the date of the plea predates  
[12] the day the buccal swabs was taken from Jerry Jean  
[13] or John In. So there was no a buccal swab from  
[14] Dyshon Marable. So he's not guilty because Dyshon  
[15] dropped the glove, that doesn't make any sense in  
[16] light of the evidence we have here.

[17] This evidence that counsel cannot  
[18] get around, I am not asking you to find him guilty  
[19] based on any one of these, not because Officer  
[20] Birch saw him running, not because all of this  
[21] stuff that is in the Altima. But if you wrap it  
[22] all together, John In is the guy in the basement,  
[23] John In is guilt of all of the charges.

[24] It is a piece of the puzzle if you  
[25] put them together. You cannot get around the fact

[1]  
[2] that John In is the guy in the basement. John In  
[3] held this gun to that poor man's head in his own  
[4] house. And he has no idea who else is in there  
[5] and has four kids in the house, imagine how  
[6] Mr. Yun felt. And imagine how Dina Khem felt when  
[7] she saw her dad at the top of the steps with a gun  
[8] to his head and pointed at her. And then you are  
[9] going to tell me Dina Khem came in here and lied.

[10] John In is guilty of all charges and  
[11] I know and I confident that when you go back there  
[12] and look all of the evidence the Commonwealth has  
[13] there's no question in your mind.

[14] Thank you for your attention.

[15] **THE COURT:** Thank you, ma'am.

[16] If you jurors would give me one  
[17] moment. We'll speak to you very briefly.

[18] (Whereupon, a discussion was held off the record, not  
[19] reported.)

[20] **THE COURT:** Ladies and gentlemen, as  
[21] you can see it's 12:45. And if you're wondering  
[22] what the conference was about, it was whether or  
[23] not I should start my instructions on the law.  
[24] Having observed that you gave these two attorneys  
[25] your complete attention and given that it's

[1]  
[2] important that you give me your complete  
[3] attention, I think we should take lunch now and  
[4] I'll charge you after lunch and that is  
[5] re-enforced by the fact that your lunches are  
[6] here.  
[7]       So if we can take lunch for until  
[8] 1:30 and when you come back I'll give you the  
[9] instructions on the law and case will be yours for  
[10] deliberations.  
[11]       **THE COURT CRIER:** Everyone remain  
[12] seated while the jury exits the courtroom.  
[13] (Jury departs the courtroom at 12:45 p.m.)  
[14]       **THE COURT:** We are back on the  
[15] record in the Commonwealth versus John In  
[16] CP-51-CR-0004829-2007. Both counsel having closed  
[17] the Court is prepared to charge.  
[18]       As soon as the jurors are ready,  
[19] we'll bring them out.  
[20]       **THE COURT CRIER:** Please remain  
[21] seated while the jurors enter the courtroom.  
[22] (Jury enters the courtroom at 2:05 p.m.)  
[23]       **THE COURT:** Good afternoon, you may  
[24] be seated.  
[25]       Mr. McNeal, would you make the

[1]  
[2] appropriate announcement, please?  
[3]       **THE COURT CRIER:** Anyone wishing to  
[4] leave the courtroom, should do so now. No one will  
[5] be able to leave or enter the courtroom while the  
[6] Judge is charging the jury.  
[7]       **THE COURT:** Ladies and gentlemen,  
[8] the first order of business is I must advise you  
[9] you must leave your notes in place. You can  
[10] collect them at the conclusion of my instructions  
[11] and take them with you into the deliberation room.  
[12]       Jurors, now that all of the evidence  
[13] has been presented and the attorneys for both  
[14] sides have made their closing arguments, it  
[15] becomes my duty to instruct you in the law which  
[16] you must on your oath accept and apply to the  
[17] facts as you determine the facts to be in reaching  
[18] your verdict.  
[19]       Now, in doing so, in instructing you  
[20] on the law, I will be reading from a written  
[21] charge as almost all Judges do to make certain  
[22] that what I am telling you is in accordance with  
[23] the laws of the Commonwealth of Pennsylvania and  
[24] is both standard and uniform. I advise you of  
[25] this that I will be reading because there is a

[1]  
[2] tendency not to pay close attention to anyone who  
[3] is reading to you. However, because it's most  
[4] important that instructions I now impart to you be  
[5] accurate and in accordance with the law of this  
[6] Commonwealth, I will be reading. I give you this  
[7] warning and nevertheless ask you to pay close  
[8] attention. If you understand that what I am about  
[9] to say to you for perhaps the next 45 minutes will  
[10] provide you with the tools you'll need to make  
[11] your decisions in the case, then you'll understand  
[12] the importance of what I have to say and the  
[13] necessity for you to pay close attention.  
[14]       As I have said, members of the jury,  
[15] you must apply only the law in which I instruct  
[16] you. You may not apply any other law which you  
[17] know or think you know. If you jurors wish  
[18] instructions on the law in addition to the  
[19] instructions I am giving you presently or if you  
[20] wish me to clarify an instructions later, then you  
[21] may through your foreperson send a written request  
[22] and I will accommodate you.  
[23]       As I mentioned at the outset and  
[24] have mentioned since we commenced this trial, it  
[25] is my responsibility as the presiding Judge to

[1]  
[2] decide questions of law and you must accept and  
[3] follow my rulings and instructions on matters of  
[4] law. However, I am not the judge of the facts in  
[5] this case, so it is not for me to decide what the  
[6] facts are concerning the charges against the  
[7] defendant. You, ladies and gentlemen, are the  
[8] only judges of the facts, so it is your  
[9] responsibility to weigh the evidence and based on  
[10] that evidence and the logical inferences which  
[11] flow from that evidence to determine what the  
[12] facts are, apply the rules of law that I impart to  
[13] you presently to those facts, and then to decide  
[14] whether the defendant has or has not been proven  
[15] guilty beyond a reasonable doubt of the charges  
[16] lodged against him.  
[17]       Now, in determining what the facts  
[18] are, you are not to -- strike that. In  
[19] determining the facts, you are to consider only  
[20] the evidence which has been presented in this  
[21] courtroom and the logical inferences which have  
[22] derived from that evidence. You are not to rely  
[23] upon supposition or guess on any matters which are  
[24] not in evidence. You should not regard as true  
[25] any evidence which you find to be incredible even



[1] if it is uncontradicted. Your determination of  
[2] the facts should not be based on sympathy for or  
[3] prejudice against the defendant or the  
[4] complainants. Nor on which attorney made the  
[5] better speech nor on which attorney you like  
[6] better.  
[7]

[8] Now, ladies and gentlemen, in these  
[9] instructions I may, but if I do so at all, it will  
[10] be to a very limited extent. I may refer to some  
[11] particular evidence in the case, I certainly don't  
[12] propose to all of the evidence, but I leave that  
[13] to your recollection. For as I said, and it bears  
[14] repeating, it is your recollection and yours alone  
[15] which must govern. So you are not bound by my  
[16] recollection nor by the recollections of these  
[17] attorneys as articulated in their arguments nor  
[18] are you to conclude that any evidence which I call  
[19] to your attention or which the attorneys have  
[20] already called to your attention is the only  
[21] evidence which is to be considered.

[22] Again, it is your responsibility, as  
[23] factfinders to consider all of the evidence that  
[24] you believe material in deliberating upon your  
[25] verdicts in this case.

[1] Jurors, a fundamental principle of  
[2] our system of criminal law is that a defendant is  
[3] presumed to be innocent. So the mere fact that  
[4] John In was arrested and is charged with crimes is  
[5] not evidence of guilt. Furthermore, a defendant  
[6] is presumed to remain innocent throughout the  
[7] trial unless and until you conclude based upon a  
[8] careful and impartial consideration of the  
[9] evidence that the Commonwealth has proven him  
[10] guilty beyond a reasonable doubt to the charges  
[11] made against him.  
[12]

[13] It is not the defendant's burden to  
[14] prove that he is not guilty. Instead, it is the  
[15] Commonwealth that always has the burden of proving  
[16] each and every element of the crimes charged and  
[17] that defendant is guilty of those crimes beyond a  
[18] reasonable doubt. So a person accused of a crime  
[19] is not required to present evidence or prove  
[20] anything in his own defense.

[21] If the evidence presented fails to  
[22] meet the Commonwealth's burden, then your verdict  
[23] must be not guilty. On the other hand, if the  
[24] evidence does prove beyond a reasonable doubt that  
[25] the defendant is guilty of the crimes charged,

[1] then your verdict should be guilty. Although the  
[2] Commonwealth has the burden of proving that the  
[3] defendant is guilty, this does not mean that the  
[4] Commonwealth must prove its case beyond all  
[5] reasonable doubt or to a mathematical certainty  
[6] nor must the Commonwealth demonstrate the complete  
[7] impossibility of innocence.  
[8]

[9] A reasonable doubt is a doubt that  
[10] would cause a reasonably careful and sensible  
[11] person to pause, hesitate, or refrain from acting  
[12] upon a matter of highest importance in his or her  
[13] own affairs or to his or her own interests. A  
[14] reasonable doubt must fairly arise out of the  
[15] evidence that was presented or out of the lack of  
[16] evidence presented with respect to some elements  
[17] of each of the crimes charged.

[18] A reasonable doubt must be a real  
[19] doubt. It may not be an imagined one nor may it  
[20] be a doubt manufactured to avoid carrying out an  
[21] unpleasant duty. So, jurors, to summarize, you  
[22] must not find the defendant guilty based upon a  
[23] mere suspicion of guilt. The Commonwealth has the  
[24] burden of proving the defendant guilty beyond a  
[25] reasonable doubt.

[1] If the Commonwealth has met that  
[2] burden then the defendant is no longer presumed to  
[3] be innocent, and you should find him guilty. On  
[4] the other hand, if the Commonwealth has not met  
[5] its burden, then you must find him not guilty.  
[6]

[7] You must consider and weigh the  
[8] testimony of each witness and give it such weight  
[9] as in your judgment it is fairly entitled to  
[10] receive. The matter of the credibility of a  
[11] witness, that is whether his or her testimony is  
[12] believable and accurate in whole or in part is  
[13] solely for your determination. So as judging of  
[14] the fact you are the sole judges of the  
[15] credibility of the witnesses and their testimony.  
[16] This means you must judge the truthfulness and  
[17] accuracy of each witness's testimony and decide  
[18] whether to believe all or part or none of that  
[19] testimony. The following are some of the factors  
[20] that you may and should consider when judging  
[21] credible and deciding whether or not to believe  
[22] testimony.

[23] **They include the following:** Was the  
[24] witness able to see, hear, or know the things  
[25] about which he or she testified? How well could

[1]  
[2] the witness remember and describe the things about  
[3] which he or she testified? Was the ability of the  
[4] witness to see, hear, know, remember, or describe  
[5] those things affected by youth, old age, or any  
[6] physical, mental, or intellectual deficiency? Did  
[7] the witness testify in a convincing manner? How  
[8] did he or she look, act, or speak while  
[9] testifying? Was his or her testimony certain or  
[10] uncertain, confused or clear, self-contradictory  
[11] or straight-forward, evasive or straight-forward?  
[12] Did the witness have an interest in the outcome of  
[13] the case, a bias, a prejudice, or motive that  
[14] might affect his or her testimony? How well does  
[15] the testimony of the witness square with the other  
[16] evidence in the case including the testimony of  
[17] other witnesses? Was it contradicted or supported  
[18] by the other testimony and evidence? Did the  
[19] testimony make sense?

[20] If you believe some part of the  
[21] testimony of a witness to be inaccurate consider  
[22] whether the inaccuracy cast doubt on the rest of  
[23] his or her testimony. This may depend on whether  
[24] he or she has been inaccurate in an important  
[25] matter or a minor detail and on any possible

[1]  
[2] explanation therefore. For example, did the  
[3] witness make an honest mistake or forget or did he  
[4] or she deliberately falsify.

[5] Now, while you are judging the  
[6] credibility of each witness, you are likely to be  
[7] judging the credibility of other witnesses or  
[8] evidence in the case. If there is a real  
[9] irreconcilable conflict, it's up to you to decide  
[10] which, if any, conflicting evidence or testimony  
[11] to believe. As so, you the jurors are responsible  
[12] to give the testimony of each witness and all the  
[13] evidence whatever credibility and weight you think  
[14] it deserves.

[15] If you conclude that one of the  
[16] witnesses testified falsely and did so  
[17] intentionally about any facts that's necessary to  
[18] your decisions in this case, then for that reason  
[19] alone you may, if you wish, disregard everything  
[20] that the witness said. However, you are not  
[21] required to disregard everything that the witness  
[22] said for this reason. It is entirely possible  
[23] that a witness testified falsely and intentionally  
[24] so in one respect, but truthfully about everything  
[25] else. If you find that to be the situation, you

[1]  
[2] may accept that part of his or her testimony which  
[3] you find to be truthful and which you believe and  
[4] you may reject that part which you find to be  
[5] false and not worthy of belief.

[6] If you find there were conflicts in  
[7] the testimony, you jurors have a duty of deciding  
[8] which testimony to believe. But you should first  
[9] try to reconcile, that is, fit together any  
[10] conflicts in the testimony if you can fairly do  
[11] so. Discrepancies in and conflicts between  
[12] testimony of different witnesses may or may not  
[13] cause you to disbelieve some or all of their  
[14] testimony. But you should remember that two or  
[15] more persons witnessing an incident may see or  
[16] hear it happen differently. Also, it is not  
[17] uncommon for a witness to be innocently mistaken  
[18] in his or her recollection of how something  
[19] happened.

[20] If you cannot reconcile a conflict  
[21] in the testimony, it is up to you to decide which  
[22] testimony, if any, to believe and which to reject  
[23] as not true or inaccurate. Again, in making this  
[24] decision consider whether the conflict involves a  
[25] matter of importance to the decision in this case

[1]  
[2] or merely unimportant detail or whether the  
[3] conflict is brought about by an innocent mistake  
[4] or an intentional falsehood. You should also keep  
[5] in mind, jurors, the other factors that go into  
[6] deciding whether or not to believe a particular  
[7] witness.

[8] In deciding which conflicting  
[9] testimony to believe, you should not necessarily  
[10] be swayed by the number of witnesses on either  
[11] side. You should consider whether the witnesses  
[12] appeared to be biased or unbiased, whether they  
[13] are interested or disinterested persons, and you  
[14] should consider all other factors which go to the  
[15] reliability of their testimony. The important  
[16] thing is the quality of the testimony of each  
[17] witness. You should also consider extent to which  
[18] conflicting testimony is supported by other  
[19] evidence in the case.

[20] Now, ladies and gentlemen, evidence  
[21] may be of two different types in a criminal case.  
[22] On the one hand there is direct evidence, which is  
[23] testimony by a witness from his or her own  
[24] personal knowledge, such as something he or she  
[25] saw or heard himself or herself. The other type



[1] is circumstantial evidence, which is testimony  
[2] about facts which point to existence of other  
[3] facts which are in question.  
[4]  
[5] The example use to illustrate  
[6] circumstantial evidence goes as follows: Suppose  
[7] you retire on a winter night and the streets are  
[8] clear. When you awoke snow was on the street and  
[9] on the sidewalks, and you saw footsteps in the  
[10] snow. You would properly conclude that snow had  
[11] fallen during the night, although you didn't see  
[12] it snow, and that someone walked in the snow,  
[13] although you saw no one walking in the snow.  
[14] That, ladies and gentlemen, is an example of  
[15] circumstantial evidence whether or not  
[16] circumstantial evidence is proof of the other  
[17] facts in question depends in part on the  
[18] application of common sense and human experience.  
[19] In deciding whether or not to accept  
[20] circumstantial evidence as proof of the facts in  
[21] question, you must be satisfied, first, that the  
[22] testimony of the witness who is presenting this  
[23] circumstantial evidence is truthful and accurate.  
[24] And second, that the existence of  
[25] the facts the witness testifies to leads to the

[1] conclusion that facts in question also happened.  
[2] Now, jurors, you recall that when I  
[3] gave you preliminary instructions on the law, I  
[4] told you that statements made by the attorneys did  
[5] not constitute evidence and, therefore, was not  
[6] binding on you. Thereafter, during the course of  
[7] this trial, I brought to your attention an  
[8] exception to this rule. I remind you that a  
[9] stipulation is one such exception. There were  
[10] stipulations in this case on both sides from the  
[11] Commonwealth and from the defense.  
[12] The law is when the Commonwealth and  
[13] the defense stipulate, that is when they agree  
[14] that a certain fact or facts are true, their  
[15] stipulations are evidence of those facts and you  
[16] jurors should regard stipulated or agreed upon  
[17] facts as proven.  
[18] I permitted Benjamin Levin to  
[19] testify as an expert witness. An expert is a  
[20] person who has special knowledge or skill in some  
[21] science, art, profession, occupation, or subject  
[22] that the witness acquired by training, education,  
[23] or experience. And because an expert has this  
[24] special, that is out of the ordinary knowledge or  
[25]

[1] skill, he may be able to supply you jurors with  
[2] specialized information, explanations, and  
[3] opinions that will assist you in deciding the  
[4] case.  
[5] Regular witnesses are bound by two  
[6] limitations that do not apply to an expert.  
[7] First, regular witnesses generally can testify  
[8] only about things that they personally perceived.  
[9] Things that they saw or heard themselves. And  
[10] second, regular witnesses are not allowed to  
[11] express opinions that require special knowledge  
[12] and skill. Now by contrast, an expert is allowed  
[13] to express an opinion or matter that is within the  
[14] area of the expertise.  
[15] Furthermore, while an expert may  
[16] base an opinion on things personally perceived, he  
[17] may also base an opinion on factual information  
[18] learned from other sources. If an expert bases an  
[19] opinion on things not personally perceived, he can  
[20] describe the information on which he relies and  
[21] identify its source when explaining his opinion.  
[22] Now, jurors, you must remember that  
[23] you are the sole judges of the credibility and  
[24] weight of all of the testimony. The fact that I  
[25]

[1] permitted a witness as an expert and the lawyers  
[2] referred to the witness as an expert and agreed  
[3] the witness had special knowledge or skill does  
[4] not mean his testimony or opinions are right.  
[5] When you are determining the credibility and  
[6] weight of an expert's testimony and opinions  
[7] consider all of the factors I described earlier  
[8] that are relevant when evaluating the testimony of  
[9] any witness. You should also consider all other  
[10] things bearing on credibility and weight including  
[11] the training, education, and experience, and  
[12] ability of the expert. The factual information on  
[13] which he based an opinion, the source and  
[14] reliability of that information, and the  
[15] reasonableness of any explanation he gave to  
[16] support his opinion or opinions.  
[17] There was evidence including the  
[18] testimony of Officer Birch that tended to show  
[19] that the defendant John In fled from the police.  
[20] The credibility and weight and affect of that  
[21] evidence is for you to decide. Generally speaking  
[22] when a crime has been committed and a person  
[23] thinks he is or may be accused of committing that  
[24] crime he flees such flight is a circumstance  
[25]

[1]  
[2] tending to show the person is conscious of guilt.  
[3] Such flight does not necessarily show  
[4] consciousness of guilt in every case. A person  
[5] may flee for some other motive or may do so even  
[6] though innocent. Whether the evidence of flight  
[7] in this case should be looked at as tending to  
[8] prove guilt depends on the facts and circumstances  
[9] in this case and especially on the motive that may  
[10] have prompted the flight. You may find the  
[11] defendant guilty solely on the basis of evidence  
[12] of flight.

[13] Jurors, it is entirely up to the  
[14] defendant in every criminal law trial whether or  
[15] not to testify. A defendant has an absolute right  
[16] founded on the Constitution to remain silent. You  
[17] must not draw any inference of guilt or any other  
[18] inference adverse to the defendant from the fact  
[19] that he did not testify in this case.

[20] Now, ladies and gentlemen, the  
[21] defendant John In is on trial before you having  
[22] been charged with the following offenses: He has  
[23] been charged with burglary; robbery, two counts;  
[24] possessing an instrument of crime, violation  
[25] Section of 6106 and 6108 of the Uniform Firearms

[1]  
[2] Act, and criminal conspiracy. To each of these  
[3] offenses the defendant has pled not guilty and  
[4] elected to be tried by you, ladies and gentlemen.  
[5] I have already instructed you concerning the  
[6] manner in which you are to consider the evidence  
[7] and the general rules of law concerning the same.  
[8] I must now instruct you on the specific charges  
[9] made against the defendant. I shall charge on  
[10] each of those offenses in turn, starting first  
[11] with burglary.

[12] The defendant John In has been  
[13] charged with burglary. To find the defendant  
[14] guilty of this offense, you must find that the  
[15] following elements have been proven beyond a  
[16] reasonable doubt.

[17] First, that the defendant entered a  
[18] particular location, to wit, 720 Mifflin Street,  
[19] Philadelphia, Pennsylvania.

[20] Second, that that location, that  
[21] place, was an occupied structure. An occupied  
[22] structure is any building or structure or place  
[23] adapted for overnight accommodations of persons  
[24] which is actually occupied at the time of the  
[25] incident.

[1]  
[2] Third, that the defendant entered  
[3] that location, 720 Mifflin Street, with the intent  
[4] to commit a crime inside. Herein, the  
[5] Commonwealth alleges robbery.

[6] Fourth, that the location, 720  
[7] Mifflin Street, was not open to the public at the  
[8] time.

[9] And fifth, that the defendant did  
[10] not have permission or lawful authority to enter  
[11] that location.

[12] If after considering all of the  
[13] evidence you find that the Commonwealth has proven  
[14] the elements just stated beyond a reasonable  
[15] doubt, then you should find him guilty of this  
[16] offense. Otherwise, you must find him not guilty  
[17] of burglary.

[18] The defendant has been charged with  
[19] robbery, two counts. The complainants are Vuthay  
[20] Yun and Christina Khem. I shall now define  
[21] robbery.

[22] The defendant, John In, has been  
[23] charged with robbery. To find the defendant  
[24] guilty of this offense, you must find that the  
[25] following two elements have been proven beyond a

[1]  
[2] reasonable doubt.

[3] First, that the defendant threatened  
[4] the complainant or complainants Vuthay Yun and/or  
[5] Christina Khem with serious bodily injury or  
[6] intentionally put the complainant or complainants  
[7] Vuthay Yun and Christina Khem in danger of  
[8] immediate serious bodily injury. And second, the  
[9] defendant did so during course of committing  
[10] theft.

[11] During the course of committing  
[12] theft means that you can find the defendant guilty  
[13] if you find beyond a reasonable doubt that he did  
[14] these things either while actually committing  
[15] theft, attempting to commit a theft, or while  
[16] fleeing after committing or attempting to commit.  
[17] A theft, of course, means taking unlawful control  
[18] of or exercising unlawful control over someone  
[19] else's property intending not to return that  
[20] property to that person.

[21] Serious bodily injury is defined in  
[22] the law as a bodily injury that creates a series  
[23] of risk of death or causes serious permanent  
[24] disfigurement or protracted loss or impairment of  
[25] any bodily member or organ. This means an injury

[1]  
[2] that causes a substantial risk that the  
[3] complainant would die or sustain an injury that  
[4] permanently and seriously disfigures the  
[5] complainant or that causes a long-term loss or  
[6] limitation on the use of any part of the human  
[7] body.

[8] After considering all of the  
[9] evidence, you find that the Commonwealth has  
[10] proven the elements just stated beyond a  
[11] reasonable doubt, then you should find the  
[12] defendant guilty of robbery. Otherwise, you must  
[13] find him not guilty of this offense.

[14] It bears repeating that there are  
[15] two complainants and you must return a verdict on  
[16] each robbery count. The robbery count where the  
[17] complainant is Vuthay Yun, the robbery count in  
[18] which the complainant is Christina Khem. The  
[19] definition of robbery applies to both  
[20] complainants.

[21] The next offense is possessing an  
[22] instrument of crime.

[23] In order to find the defendant  
[24] guilty of possessing a criminal instrument as  
[25] charged in this case, you must be satisfied that

[1]  
[2] the following elements have been proven beyond a  
[3] reasonable doubt.

[4] First, that the defendant possessed  
[5] a certain item, that is a handgun. For a person  
[6] to possess an item he must have the power to  
[7] control and the intent to control that item.

[8] And second, that the item was an  
[9] instrument of crime. An instrument of crime is  
[10] anything specially made for criminal use or  
[11] anything specially adapted for criminal use or  
[12] anything that is used for criminal purposes and  
[13] possessed by the defendant at the time of the  
[14] alleged offense under circumstances not manifestly  
[15] appropriate for lawful uses it may have.

[16] That a thing could somehow  
[17] facilitate the possible commission of a crime is  
[18] not enough. To be an instrument of crime, a thing  
[19] must be something the defendant would need to use  
[20] in the commission of the underlying offense or  
[21] offenses.

[22] And third, that the defendant  
[23] possessed that item, to wit, a handgun with intent  
[24] to employ it criminally. That is with intent to  
[25] attempt or to commit a crime with it. The

[1]  
[2] Commonwealth has charged here that the crime the  
[3] defendant intended to commit with the instrument  
[4] alleged was burglary and/or robbery.

[5] If after considering all of the  
[6] evidence you find the Commonwealth has proven the  
[7] elements just stated beyond a reasonable doubt,  
[8] then you should find the defendant guilty of  
[9] possessing an instrument of crime. Otherwise, you  
[10] must find him not guilty of this offense.

[11] The defendant is charged with  
[12] violating Section 6108 of the Uniform Firearms  
[13] Act, to wit, carrying firearms on a public street  
[14] or public property of Philadelphia.

[15] In order to find him guilty of  
[16] violating Section 6108 of the Uniform Firearms  
[17] Act, you must be satisfied that the following  
[18] elements have been proven beyond a reasonable  
[19] doubt.

[20] First, that the defendant carried a  
[21] firearm on the public streets or public property.

[22] And second, that the defendant did  
[23] not have a license for carrying a firearm.

[24] And third, that the firearm was in  
[25] operating condition.

[1]  
[2] For purposes of this offense a  
[3] firearm is any pistol or revolver with a barrel  
[4] length less than 12 inches.

[5] If after considering all of the  
[6] evidence you find the Commonwealth has proven the  
[7] evidence elements just stated beyond a reasonable  
[8] doubt, then you should find the defendant guilty  
[9] of violating Section 6108 of the Uniform Firearms  
[10] Act, carrying a firearm on the public streets or  
[11] property in Philadelphia. Otherwise, you must  
[12] find him not guilty of this offense.

[13] The defendant has also been charged  
[14] with violation of Section 6106 of the Uniform  
[15] Firearms Act, carrying a firearm without a  
[16] license. To find the defendant guilty of this  
[17] offense, you must find that each of the following  
[18] elements have been proven beyond a reasonable  
[19] doubt.

[20] First, that the defendant carried a  
[21] firearm either in a vehicle or concealed on/or  
[22] about his person. A firearm is any pistol or  
[23] revolver with a barrel less than 15 inches or a  
[24] pistol or revolver with an overall length of less  
[25] than 26 inches. To be a firearm the specific

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[1]  
[2] object charged must be either be operable, that is  
[3] -- strike that.

[4] To be a firearm the specific object  
[5] charge must be operable, that is capable of firing  
[6] a projectile.

[7] And second, at that the defendant  
[8] was not in his place of abode, that is his home or  
[9] fixed place of business.

[10] And third, that the defendant did  
[11] not have a valid and lawfully issued license for  
[12] carrying a firearm.

[13] If after considering all of the  
[14] evidence you find that the Commonwealth has proven  
[15] the elements just stated beyond a reasonable  
[16] doubt, then you should find the defendant guilty  
[17] of violating Section 6106 of the Uniform Firearms  
[18] Act, carrying a firearm without a license.  
[19] Otherwise, you must find him not guilty of this  
[20] offense.

[21] Finally, the defendant has been  
[22] charged with criminal conspiracy. John In is  
[23] charged with conspiracy to commit robbery and/or  
[24] burglary. I have already defined both robbery and  
[25] burglary for you.

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[1]  
[2] that one of them will do the job. What is  
[3] necessary is that the parties do agree. In other  
[4] words, do come to a firm, common understanding  
[5] that a crime or crimes will be committed.

[6] Although the agreement itself is the  
[7] essence of the conspiracy, a defendant cannot be  
[8] convicted of conspiracy unless he or a fellow  
[9] conspirator does something more, does an overt act  
[10] in furtherance of the conspiracy. The overt act  
[11] is an act by any member of the conspiracy that  
[12] would serve to further the goals of the  
[13] conspiracy. The overt act can be criminal or  
[14] non-criminal in itself as long as it is designed  
[15] to put the conspiratorial agreement into effect.

[16] This is to show that the parties  
[17] have a firm agreement and are not just thinking or  
[18] talking about committing a crime or crimes. The  
[19] overt act shows the conspiracy has reached the  
[20] action stage. If a conspirator actually commits  
[21] or attempts to commit the agreed upon crime or  
[22] crimes that obviously would be an overt act in  
[23] furtherance of the conspiracy. But a small act or  
[24] a step that is much more preliminary and a lot  
[25] less significant can satisfy the overt act



[1]  
[2] To be proved guilty of being a conspirator, the  
[3] defendant must have intended to act jointly with  
[4] the other person or persons charged, and must have  
[5] intended that the crime or crimes allege to be a  
[6] goal of the conspiracy would be committed.

[7] The Commonwealth alleged that the  
[8] defendant John In conspired with certain other  
[9] persons, to wit, Jerry Jean and Dyshon Marable.  
[10] The Commonwealth alleges that the crimes of  
[11] robbery and/or burglary was the object of the  
[12] conspiracy. I have, as I said before, already  
[13] defined those offenses.

[14] The Commonwealth alleges that the  
[15] following was an overt act, to wit, the defendant  
[16] and/or his co-conspirator took property of another  
[17] person.

[18] Before any defendant can be  
[19] convicted, the 12 jurors must agree on the same  
[20] person or persons whom the defendant allegedly  
[21] conspired with the same object crime or crimes and  
[22] the same overt act.

[23] In order to find defendant guilty of  
[24] conspiracy to commit robbery and/or burglary, you  
[25] must be satisfied that the following three

[1]  
[2] elements have been proven beyond a reasonable  
[3] doubt.

[4] First, that the defendant agreed  
[5] with the other person or persons that one or more  
[6] of them would engage in conduct for planning and  
[7] commission of the crime or crimes charged,  
[8] burglary and/or robbery.

[9] And second, that the defendant  
[10] and/or the other persons or persons intended to  
[11] promote or facilitate the commission of that crime  
[12] or those crimes. In other words, they share the  
[13] intention to bring about that crime or those  
[14] crimes or to make it easier to commit that crime  
[15] or those crimes, robbery and/or burglary.

[16] And third, that the defendant or the  
[17] other person or persons did the fact that is  
[18] alleged to have been an overt act and did it in  
[19] furtherance of the conspiracy.

[20] As a general rule, if one of the  
[21] conspirators agreed to commit a crime and after  
[22] that one of the conspirators does any act to carry  
[23] out or advance their agreement, then he has done  
[24] an overt act in furtherance of their conspiracy.  
[25] The other conspirators do not have to participate

[1]  
[2] in the act or even know about it. In a sense they  
[3] are partners and like partners they are  
[4] responsible for each other's actions.

[5] I charge you that a conspiracy can  
[6] have as its objective one crime or many crimes.  
[7] But it is your task to determine what objective  
[8] has been proved beyond a reasonable doubt.

[9] Now, jurors, I must instruct you on  
[10] the concept of liability for conduct of another  
[11] person or persons. There are two basic ways that  
[12] one defendant may be criminally responsible for  
[13] conduct committed by another person or persons.  
[14] These two ways may apply even if the defendant in  
[15] question was not present at the time and place  
[16] when the particular act or occurred.

[17] The first way is for the defendant  
[18] to be a member of the conspiracy. I have already  
[19] defined for you what a conspiracy is and how one  
[20] is proved. As applied to this case, if it is  
[21] proved beyond a reasonable doubt that the  
[22] defendant was indeed a member of a conspiracy, he  
[23] may be held responsible for the act or acts of  
[24] another person or persons if each of the following  
[25] elements is proved beyond a reasonable doubt.

[1]  
[2] First, that the other person or  
[3] persons committed a specific act that was also a  
[4] member of the same conspiracy -- strike that.

[5] First, that the other person who  
[6] committed a specific act was also a member of the  
[7] same conspiracy.

[8] And second, that the crime or crimes  
[9] in question was or were committed while the  
[10] conspiracy was in existence.

[11] And third, that the crime or crimes  
[12] in question was or were committed to further the  
[13] goals of the conspiracy.

[14] There is a second and separate way  
[15] that one defendant can be proved liable for the  
[16] conduct of another person or persons. That is  
[17] when the defendant is an accomplice of the person  
[18] who actually commits the crime or crimes at  
[19] issue.

[20] Now, jurors, there is a basic  
[21] difference between being an accomplice and being a  
[22] conspirator. In a conspiracy people agree to act  
[23] jointly. To be an accomplice a person does not  
[24] have to agree to help someone, a person is an  
[25] accomplice if he on his own acts to have the other

[1] person or persons commit a crime or crimes.  
[2] More specifically, the defendant is  
[3] an accomplice of another person for particular  
[4] crime or crimes if the following two elements are  
[5] proven beyond the reasonable doubt.  
[6] One, that the defendant had the  
[7] intent of promoting or facilitating the commission  
[8] of that crime or those crimes.  
[9] And two, that the defendant either  
[10] solicits, commands, encourages, or request the  
[11] other person or persons to commit that crime or  
[12] those crimes or aids, agrees to aid, or attempts  
[13] to aid the other person or persons in planning or  
[14] committing that crime or those crimes.  
[15] It is important to understand that a  
[16] person is not an accomplice merely because he is  
[17] present when a crime is committed or simply knows  
[18] that a crime is being committed. Accomplice  
[19] liability must be assessed separately for each  
[20] crime charged. If two of the crimes are committed  
[21] and the defendant is charged for accomplice for  
[22] each of those crimes he may not be found liable as  
[23] to each individual crime that the defendant had  
[24] the intent of promoting the specific crime, and  
[25]

[1] then either solicited, commanded, encouraged, or  
[2] requested the other person or persons to commit  
[3] that crime or those crimes or aided, agreed to aid  
[4] or attempted to aid the other person in planning  
[5] or committing that crime or those crimes.  
[6] In other words, you must decide  
[7] whether the prosecution has proved beyond a  
[8] reasonable doubt that the defendant was an  
[9] accomplice to each crime, the first crime, the  
[10] second crime, et cetera.  
[11] Ladies and gentlemen, that concludes  
[12] the instructions, the definitions of the crimes  
[13] charged against the defendant. I must now advise  
[14] you as to the standards by which you must be  
[15] guided as you deliberate on your verdicts.  
[16] In order to return a verdict each  
[17] juror must agree. Your verdict must be unanimous,  
[18] a majority vote is not permissible. You as jurors  
[19] have a duty to consult with one another and to  
[20] deliberate with a view to reaching a unanimous  
[21] agreement if it can be done without violence to  
[22] individual judgment. That is to say that each  
[23] juror must decide the case for himself or herself,  
[24] but only after an impartial consideration of the  
[25]

[1] evidence with his or her fellow jurors.  
[2] In the course of such deliberations  
[3] a juror should not hesitate to re-examine his or  
[4] her own views and to change his or her own opinion  
[5] if convinced it is erroneous. But no juror should  
[6] surrender his or her honest convictions as to the  
[7] weight or affect of the evidence or as to the  
[8] guilt or innocence of the defendant solely because  
[9] of the opinion of his or her fellow jurors or for  
[10] the mere purpose of returning a unanimous verdict.  
[11] In deliberating on your verdict, you  
[12] must not be influenced by anything outside of the  
[13] evidence presented in this case and the law as  
[14] given by this Judge. Now, ladies and gentlemen,  
[15] the instructions and the law have essentially been  
[16] completed. I need only to meet briefly with the  
[17] attorneys and, thereafter, I shall return and  
[18] submit the case to you for your deliberations.  
[19] Please bear with us one more time.  
[20] (The following occurred in the anteroom:)  
[21] **THE COURT:** I am in the anteroom  
[22] with the attorneys, Ms. Baraldi and Mr. Giuliani.  
[23] As I said to the jurors, I concluded the  
[24] instructions and this is your opportunity to bring  
[25]

[1] to my attention any requests for corrections or  
[2] make any objections, request for clarifying  
[3] instructions, or additional instructions.  
[4] **MR. GIULIANI:** I have none.  
[5] **MS. BARALDI:** I don't have any.  
[6] **THE COURT:** Okay. So we'll submit  
[7] the case. How long do you expect we should keep  
[8] them today?  
[9] **MR. GIULIANI:** I have no  
[10] limitations, as long as you want.  
[11] **MS. BARALDI:** I have to leave by  
[12] 5:00.  
[13] (The following occurred in open court:)  
[14] **THE COURT:** Ladies and gentlemen,  
[15] when you retire to deliberate on your verdict, you  
[16] will select one of your members as a foreperson,  
[17] foreman or forelady. And that person will have  
[18] the responsibility of leading you in your  
[19] discussions and he or she will also have the duty  
[20] of announcing your verdict in open court. Please  
[21] keep in mind that the foreperson has only one vote  
[22] the same as the rest of you.  
[23] Now, when you go out to deliberate  
[24] you will take with you this verdict sheet. And  
[25]



[1]  
[2] you will see it is the case of Commonwealth versus  
[3] John In. And what is important on this verdict  
[4] sheet is what appears under the word "charge" in  
[5] the left hand column and what you will write under  
[6] the word "verdict" in the right hand column.

[7] So you will deliberate on the crime,  
[8] burglary, 720 Mifflin Street, write in your  
[9] verdict, guilty or not guilty. You will  
[10] deliberate on the charge of robbery Vuthay Yun,  
[11] and write in your verdict, guilty or not guilty.  
[12] You will deliberate on your charge of complainant  
[13] Christina Khem, and write in your verdict, guilty  
[14] or not guilty. You will deliberate on the charge  
[15] of possession an instrument of crime, and write in  
[16] your verdict, guilty or not guilty. You will  
[17] deliberate on violation of Section 6108, carrying  
[18] a firearm in public in Philadelphia, and write in  
[19] your verdict, guilty or not guilty. You will  
[20] deliberate on the charge of violating Section 6106  
[21] Uniform Firearms Act, write in your verdict,  
[22] guilty or not guilty. And finally deliberate on  
[23] the charge of criminal conspiracy.

[24] Now, you will see on this verdict  
[25] sheet there's a special section for the crime of

[1]  
[2] conspiracy. If you find the Commonwealth has  
[3] proven the defendant guilty beyond a reasonable  
[4] doubt of criminal conspiracy, you will be asked to  
[5] mark the crime or crimes that you find proved  
[6] beyond a reasonable doubt to be the objective of  
[7] conspiracy. So there is an interrogatory that  
[8] says answer only if your verdict on conspiracy is  
[9] guilty. What crime or crimes do you find to be  
[10] the objective of the conspiracy; burglary, yes, or  
[11] no; robbery, yes or no.

[12] In order for this verdict to be  
[13] valid the foreperson must sign the sheet, affix  
[14] his or her juror number, and date the sheet, that  
[15] is after completing it, obviously.

[16] Now, that does, in fact, conclude my  
[17] instructions in the law. I have but one final  
[18] thing to say and then the matter will be yours for  
[19] deliberation. And that final thing is this if  
[20] each of you, and this is a suggestion, treat his  
[21] or her fellow jurors with the same courtesy and  
[22] respect in your everyday lives, it will make your  
[23] deliberative process easier, more meaningful, and  
[24] will facilitate the resolution of this matter.

[25] I will now send you out to

[1]  
[2] deliberate, but first, I must ask Jurors No. 13  
[3] and 14 to collect their belongings from the jury  
[4] room and take a seat in the first row of the  
[5] courtroom.

[6] The final question to counsel,  
[7] Ms. Baraldi, Mr. Giuliani, do either of you have  
[8] any objection to the jurors retiring to deliberate  
[9] at this time?

[10] **MR. GIULIANI:** Absolutely not, Your  
[11] Honor.

[12] **MS. BARALDI:** No, Your Honor.

[13] **THE COURT:** Then Jurors No. 1  
[14] through and including 12, you may retire to  
[15] commence your deliberations and, of course, you  
[16] may take your note pads.

[17] Thank you.  
[18] (Juror commence deliberation at 3 o'clock p.m.)

[19] **THE COURT:** Let the record reflect  
[20] that the jurors have all left the room. And I  
[21] will acknowledge that both attorneys conducted  
[22] themselves like professionals and I observed that  
[23] they were both well-prepared and executed  
[24] themselves well. Thank you both for a case well  
[25] tried.

[1]  
[2] **MR. GIULIANI:** Thank you, Your  
[3] Honor.

[4] **MS. BARALDI:** Thank you, Your Honor.

[5] **THE COURT:** All right. Now I know  
[6] there are certain people who would like for the  
[7] jury to deliberate until midnight, but I think  
[8] that given that we have at least three people with  
[9] child care responsibilities, we will recess at  
[10] either 4:30 or 5:00. And obviously if there is no  
[11] verdict by that time, we will reassemble here on  
[12] Monday to conclude.

[13] Any objection?

[14] **MR. GIULIANI:** No, Your Honor.

[15] **MS. BARALDI:** No, Your Honor.

[16] **THE COURT:** It has been a long day.  
[17] Mr. Smith, Ms. Laura Vitz, I nearly forgot you  
[18] were not spectators. I want to say a word of  
[19] thanks. You heard me thank the attorneys for  
[20] being diligent. I should like to also thank the  
[21] two of you for, first of all, agreeing to serve.  
[22] You obviously will not be deliberating on the  
[23] verdict but it's important that you understand  
[24] that your service is appreciated.

[25] And I want to say a word of thanks

[1]  
[2] for that and to tell you that when you go back and  
[3] speak to your friends and neighbors, please tell  
[4] them when they are called down don't attempt to  
[5] manufacture excuses why they can't serve. When  
[6] you think about it, who better to serve than you  
[7] and you. So for that reason, I say thank you and  
[8] you are excused. Enjoy your weekend.

[9] (Alternate jurors excused.)

[10] **THE COURT CRIER:** Please remain  
[11] seated while the jury enters the courtroom.

[12] (Jury enters the courtroom at 4:20 a.m.)

[13] **THE COURT:** Good afternoon, ladies  
[14] and gentlemen. Would you please be seated?

[15] **THE JURY:** (Jury complies.)

[16] **THE COURT:** Would the foreperson  
[17] please rise and identify yourself?

[18] **THE FOREPERSON:** By name?

[19] **THE COURT:** Seat number.

[20] **THE FOREPERSON:** Juror No. 4.

[21] **THE COURT:** Mr. Foreman, does the  
[22] jury have a question or questions?

[23] **THE FOREPERSON:** Yes, sir.

[24] **THE COURT:** Read them exactly as  
[25] they appear on your written form.

[1]  
[2] **THE FOREPERSON:** First question is,  
[3] "Can we see the transcript from the radio call  
[4] from March 7th, 2007?"

[5] **THE COURT:** Yes, sir.

[6] **THE FOREPERSON:** All of them?

[7] **THE COURT:** Yes.

[8] **THE FOREPERSON:** Can we see the  
[9] exhibit that shows 720 Mifflin, 524 Mifflin, 7th  
[10] Street, and 6th Street? This is the rectangular  
[11] map."

[12] Question No. 3, "Were there any  
[13] fingerprints taken from the door or steering wheel  
[14] of the Altima.

[15] Question No. 4, "Did Mr. Yun testify  
[16] at Mr. Jeans' trial presuming there was a trial?"

[17] Question No. 5, "Can we have a  
[18] written copy of the law related to the definition  
[19] of robbery?"

[20] Question No. 6, "Can we see the  
[21] exhibit that shows the aerial view of Jerry Jean  
[22] and John In's neighborhood?"

[23] Question No. 7, "Can we see the  
[24] pictures taking by CSU of the white Altima."

[25] Question No. 8, "Can we see a copy

[1]  
[2] of Officer Birch's statement from March 7th,  
[3] 2007?"

[4] Question No. 9, "Can we see the last  
[5] copy of Officer Birch's statement from March 20th,  
[6] 2007?"

[7] **THE COURT:** Thank you, Mr. Foreman.

[8] Ladies and gentlemen, the first  
[9] thing I should say to you is there is no time  
[10] limit for your deliberation. You have as much  
[11] time as you need. Having said that and being  
[12] aware that it's now onto 4:30, it is this Court's  
[13] position that I should address your questions on  
[14] Monday at 9 o'clock. So that after I answer the  
[15] questions, my answer will be fresh in your mind  
[16] and you can resume your deliberations at that  
[17] time. So with your permission, we will recess the  
[18] case today.

[19] With this admission, remember you  
[20] are a deliberating jury, but you may only  
[21] deliberate when the 12 of you are together in the  
[22] jury room. You may not discuss the case with  
[23] anyone over the weekend, don't let anyone discuss  
[24] it with you. You cannot call each other and  
[25] discuss the case. You should have no discussion

[1]  
[2] of the case. Keep an open mind. Report here at 9  
[3] o'clock on Monday morning. I will address each of  
[4] your nine questions and you can then resume your  
[5] deliberations. If I might say to you, have a good  
[6] weekend and I'll see you back on Monday.

[7] **THE COURT CRIER:** Everyone remain  
[8] seated while the jury exits the courtroom.  
[9] (Jury departs the courtroom at 4:25 p.m.)  
[10] (Court adjourned.)

[1]  
[2] I hereby certify that the proceedings and  
[3] evidence are contained fully and accurately in the notes  
[4] taken by me on the trial of the above case, and this copy  
[5] is a correct transcript of the same.

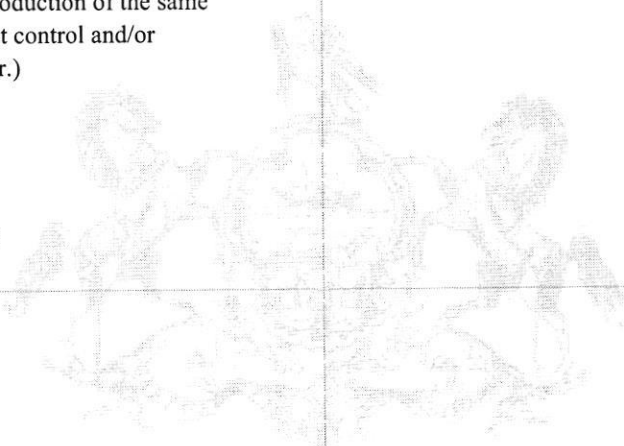
[6]  
[7]  
[8]  
[9]

[10] \_\_\_\_\_  
[11] Samanda Rios  
[12] Court Reporter  
[13]  
[14]  
[15]  
[16]

[17] (The foregoing certification of this  
[18] transcript does not apply to any reproduction of the same  
[19] by any means unless under the direct control and/or  
[20] supervision of the certifying reporter.)

[21]  
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# Lawyer's Notes

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